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IN THE

SUPREME COURT

OF THE

UNITED STATES

October Term, 1972

No. 72-659

MAX OFFENBERG and MARIE OFFENBERG, husband and wife,

Petitioners,

- vs -

THE STATE OF CALIFORNIA, THE COUNTY OF SAN BERNARDINO, G. LEON GREGORY, Tax Collector of the County of San Bernardino, ORVILLE K. DOYLE and LEONA M. DOYLE, husband and wife,

Respondents.

RESPONSE OF RESPONDENTS DOYLE TO PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA COURT OF APPEAL, FOURTH APPELLATE DISTRICT, DIVISION TWO

STATEMENT OF FACTS

This petition was filed late and should therefore be denied (Point I). The petition does not present the facts in the case with accuracy and does not cite the record in support of purported factual statements.

What is presented is a highly argumentative and biased statement disregarding totally the findings of the trial court, findings which were found to be supported by substantial evidence in the opinion of the California Court of Appeal below. Respondents Doyle urge in Point II that because of the violation of Rule 23 by the petitioners this petition should be denied. In the event, however, the Court does not see fit to deny the petition under the grounds stated in Points I or II, and the facts of the case therefore become material to the Court's determination, the Respondents Doyle do present herewith a statement of facts which they believe to be accurate and which contains appropriate references to the record.

Petitioners' verified complaint, filed on February 16, 1970, alleged that plaintiffs had "for a long time" been the owners of the subject property (a lot improved by a cabin at Big Bear Lake, California); that the property was sold to the State of California on June 30, 1964, for unpaid property taxes for the fiscal year 1963-1964; that on January 20, 1970, the property was conveyed by tax deed to the Defendants Doyle. [Clk. p.2, l.8-27.]

The complaint further alleged that since January 22, 1963, the assessment roll showed the address of plaintiffs as 127 Utah Street, Los Angeles; that "said address was and now is a correct mailing address for plaintiffs." [Clk. p.2, l.29-32.] California Revenue and Tax Code Section 3701 was quoted verbatim as follows:

> "After receiving the written authorization of the Controller and not less than twenty-one nor more than twenty-eight days, before the proposed sale, the tax collector shall send a notice by registered mail of the intended sale to the last assessee of each portion of the property at his last known address. To ascertain the address of the last assessee of the tax-deed property, an examination shall be made of the assessment of this property on the rolls beginning with the year of delinquency to and including that of the last equalized roll."

The complaint alleged that the tax deed was invalid for failure of the tax collector to send notice of proposed sale as required by Section 3701 to the plaintiffs; that the tax collector rather mailed notice to plaintiffs at an address in Yuma, Arizona; that, upon the return of that notice by the post office, the tax collector examined the assessment roll, discovered the true address of the plaintiffs, but, nonetheless, failed to give the required statutory notice. [Clk. p.3, l.1 to p.4, I.2.]

The defendant State of California filed a disclaimer [Clk. pp.28-29.] (Petitioners contend here the State acted to rectify a gross injustice to them. To say the least, this contention finds no support in the record.) The answer of the County of San Bernardino denied that the assessment roll for any year since 1963 for the subject property ever showed the address of 127 Utah Street, Los Angeles, California; it alleged compliance with Section 3701 and set forth the affirmative defense of estoppel against the plaintiffs for failing to take any steps to discover why they did not receive tax statements on the property, for failing to notify the

assessor as to their correct mailing address, and for failure to take reasonable steps to ascertain and pay their property taxes from January 22, 1963, through the date of the tax sale, January 20, 1970. [Clk. pp. 8-12.]

The matter was tried without a jury. The evidence showed that petitioners purchased the subject property, from a Henry Rampy of Yuma, Arizona, on January 23, 1963, through an escrow at The Bank of California in Big Bear, California. [Ex.B-D, C-D.] The escrow instructions provided for proration of the real property taxes [Ex. B-D], and the taxes for the fiscal year 1962-1963 were prorated by the escrow holder according to the closing escrow statement furnished to the petitioners [Ex. C-D]. Plaintiffs Offenberg informed their auditor of this transaction by furnishing him with the escrow instructions and the closing statement showing the prorated real property tax payment. [R. p.143, l.8-22.] Their payment of the buyers' prorata share of taxes for the fiscal year 1962-1963 was the last payment of taxes made by the Offenbergs on this property. [R. p.129, l.8-12.]The Offenbergs owned a dozen other parcels of real property on which they paid taxes. [R. p.119, l.15-28.]

The assessment rolls for the years 1963 through 1969 were prepared by the San Bernardino County tax assessor's office and then delivered to the tax collector's office. [Ex. 2, R. p.5, l.10-24.] The tax collector prepared tax statements from the assessment roll and then mailed them to the last assessee at the address shown on the assessment roll. [R. p.5, l.10 to p.6, l.1.]

Tax statements on this property were mailed to the Offenbergs at 2540 Fourth Avenue, Yuma, Arizona [R. p.5, l.10-26], an address which the escrow instructions showed as the address for the seller [Ex. 1, B-D]. There was no evidence as to whether the statements so addressed were returned to the tax assessor's office. [R. p.6, l.2 to p.7, l.18.]

Petitioners for seven years never received any tax statements. [R. p.128, l.15-18.] The Offenbergs never inquired of the tax assessor's or the tax collector's office why they were not receiving tax bills. [R. p.129, l.25 to p.130, l.4.] Dr. Offenberg inferred from the nonreceipt of tax statements that this property had escaped assessment. He testified [R. p.129, l.5-12]:

> "Q Did you ever ask the owners around you whether they got assessed for their property?
>
> "A I know they got assessed. I know I was going to get assessed also.
>
> "Q When did you think it was going to happen, sir?
>
> "A I didn't know about that. We didn't receive any notice. I didn't pay it. That is what it amounts to."

Mrs. Offenberg likewise believed their property had escaped assessment. On the day she learned of the tax sale, she went to talk to the respondent purchasers at the property in Big Bear, and her first statement to them was, "I have never been assessed and never re-

ceived a tax bill." [R. p.207, l.15 to p.208, l.1.] On cross-examination, after admitting to the making of this statement, Mrs. Offenberg reiterated, "I didn't receive a tax bill. I did not receive a tax bill." [R. p.137, l.16-23.]

Early in the trial, plaintiffs' attorney represented to the Court that ". . . even to this date their address is 127 South Utah, Los Angeles, California." [R. p.34, l.10-12]. On direct examination, Dr. Offenberg was asked whether this was his address and whether he regularly received mail at that address through January of 1970. He replied in the affirmative. [R. p.111, l.5-9.]

But on cross-examination, the doctor admitted that he had sold the hospital in October, 1969. [R. p.115, l.2-4]. He stated that he continued to receive mail addressed to him there after the sale, but it was mail that was forwarded to him by the post office pursuant to the change of address he had filed with the post office. [R. p.115, l.15-24.] Mrs. Offenberg admitted that on the day she learned of the tax sale she stated that, "I'm not even sure I get half of my mail there since we sold the hospital." [R. p.137, l.16-19.]

Mrs. Offenberg admitted she had owned another parcel of real property in San Bernardino County for over five years before the tax sale. [R. p.134, l.21 to p.135, l.21.] She received tax bills on that property, and she paid them. [R. p.134, l.14-24.] She admitted that on December 8, 1969, after the sale of the hospital in October, but before the mailing of notice of the tax sale on the subject property, she filled out and filed

with the San Bernardino County Tax Assessor a form reflecting a change of mailing address for tax statements for her Hesperia property from 127 Utah Street, Los Angeles, to her residence at 1107 West Beverly Boulevard, Montebello. [R. p.136, l.3-13; p.116, l.23 to p.117, l.7; Ex. A-D.]

The subject property was sold to the State on June 3, 1963. [Ex. 2, R. p.9, l.7-11.] It was deeded to the State on July 3, 1969 [Ex. 2], and was scheduled for sale by public auction on January 20, 1970 [R. p.100, l.12 to p.101, l.19]. Notice of sale was made by registered letter addressed to the Offenbergs at 2540 Fourth Avenue, Yuma, Arizona; it was mailed on December 29, 1969, and was returned to the tax collector on January 2, 1970, with the notation, "Moved — Left no Address." [R. p.15, l.13 to p.16, l.5, Ex. 3.] Notice of the sale was published in newspapers at the county seat and in the judicial district where the property was located on December 29, 1969. [R. p.106, l.2 to p. 107, l.12; Ex. 8 and 9.]

The deputy tax collector testified that in preparation for the tax sale, a tax search sheet was typed sometime after July of 1969. [Ex. A; R. p.72, l.1-4.] A check was made to search for any changes of ownership and other information to assist in identifying the assessee, including the finding of any other addresses for the assessee and addresses of adjoining owners. [R. p.76, l.1-8.] In this process, the recorded deed under which the Offenbergs acquired title was examined and, as a result, the address of 127 Utah Street, Los Angeles, was noted on the tax search sheet in November, 1969. [R. p.61, l.3-13; p.73, l.14-26; p.82,

l-114; Ex. 1.] On December 29, 1969, on the same date the tax collector sent a registered-mail notice to the address shown on the assessment roll, namely, 2540 Fourth Avenue, Yuma, Arizona, he also mailed the same notice by regular mail to Max Offenberg at 127 Utah Street, Los Angeles [Ex. B and 3; R. p.92, l-8-13; p.83, l.26 to p.84, l.17], and to three adjoining property owners [R. p.93, l.11 to p.95, l.12; Ex. B and C].

On or about January 10, 1970, the deputy tax collector noted on the assessment roll for a vacant adjoining parcel of the Offenbergs, which was withdrawn from sale because of an error in description, a notation placed there by the assessor's office showing a substitute address of 127 Utah Street, Los Angeles. [Ex. 6; R. p.102, l.1-23.] On January 10, 1970, the deputy tax collector sent a second notice of sale by regular mail to the Offenbergs at that address. [R. p.101, l.20 to p.104, l.8.] The tax sale was made on January 20, 1970, to the respondents Doyle. [Clk. p.2, l.8-27; Ex. 11.]

The trial court found that on December 29, 1969, and within the time provided by Section 3701 of the Revenue and Taxation Code, the tax collector sent a registered-mail notice of the intended sale to the last assessee of the subject property, namely, the plaintiffs, at the address of the assessee as reflected by the assessment rolls beginning with the year of delinquency, to and including that of the last equalized roll, and that said address was 2540 Fourth Avenue, Yuma, Arizona. [Clk. p.57, l.7-15.] The Court further found that

a copy of the notice was also mailed on December 29, 1969, by regular mail to the plaintiffs at 127 Utah Street, Los Angeles, California, and that the tax collector on January 10, 1970, again mailed a copy of the notice by regular mail to the plaintiffs at that address. [Clk. p.57, l.17-22.]

The trial court found that the plaintiffs were estopped to question the validity of the deed for their failure to take any steps to discover why they were not receiving tax statements, for their failure to notify the assessor of their correct mailing address, for their failure to make reasonable efforts to ascertain the taxes due on the property from the time they acquired the property through January 20, 1970, and for their failure to pay any taxes on the property during the said period while they were record owners thereof. [Clk. p.58, l.7-11.]

I

THE PETITION WAS NOT FILED WITHIN THE PRESCRIBED TIME AND SHOULD BE DENIED.

A writ of certiorari for the purpose of bringing a judgment of a state court before the United States Supreme Court for review is required to be applied for within ninety days after the entry of the judgment. 28 U.S.C. Section 2101(c). The judgment of the Appellate Court which is sought to be reviewed here was entered on May 31, 1972. See photocopy of Court of Appeal opinion appended hereto as Appendix "A" bearing the filing stamp of the clerk of the Court of Appeal. The test of finality for purposes of review of a final judgment of a state appellate court is the rendition of a final appellate decision on the issues, that is

to say, the date of the filing of the opinion. As this Court stated in *Market St. Ry. Co. v. R. R. Com.* (1945) 324 U.S. 548, 65 S.Ct. 770, 89 L.Ed. 1171:

> "The judgment for our purposes is final when the issues are adjudged. Such finality is not deferred by the existence of a latent power in the rendering court to reopen or revise its judgment . . . such latent powers of State Courts over their judgments are too variable and indeterminate to serve as tests of our jurisdiction. Our test is a practical one. When the case is decided, the time to seek our review begins to run." [324 U.S. at 551-552.]

The petitioners here did apply to the California Supreme Court for a hearing which was denied on July 26, 1972. See photocopy of denial appended hereto as Appendix "B." Even if the date on which the hearing was denied in the California Supreme Court were taken as the date of final judgment for the purpose of starting the running of the ninety-day period, the petition was required to be filed on October 24, 1972, and, in fact, was not filed until October 28, 1972. No extension of the ninety-day period was obtained, and, thus, this Court lost certiorari jurisdiction four days before the petition was filed.

II

THE PETITION SHOULD BE DENIED BECAUSE OF PETITIONERS' MISSTATEMENT OF THE FACTS.

Petitioners state that the California Court of Appeal upheld as adequate a notice of sale of real property directed to a "known incorrect address" where the

government "knew" the property owner's correct address; and that this presents a question whether such procedure is consonant with due process of law, a question which they say was not dealt with by the Court of Appeal.

But this due process issue here as before the California Court of Appeal is simply a fabrication founded upon misstatement of facts.

The petitioners alleged in their verified complaint that 127 Utah Street, Los Angeles, was their correct mailing address at the time of the mailing of the statutory registered mail notice on December 29, 1970. [Clk. p.2, l.31-32.] This assertion was reiterated by plaintiffs' counsel at an early stage of the trial when he represented to the trial court that "[a]t all times . . . *even to this date*, their address is 127 South Utah, Los Angeles, California." [R. p.34, l.9-12; italics added.] Dr. Offenberg testified on direct examination that he regularly received his mail at that address through January, 1970. [R. p.111, l.5-9.]

But, on cross-examination, Dr. Offenberg admitted that he sold the hospital in October, 1969. [R. p.115, l.2-4.] He then volunteered that he "still received mail from there," not, however, mail forwarded on by the buyers, but by the post office pursuant to a change-of-address form which he filed with the post office. [R. p.115, l.8-24.] Mrs. Offenberg admitted that on the day she learned about the tax sale she stated to the Doyles: "I'm not even sure I get half my mail there since we sold the hospital." [R. p.137, l.16-19.] She further admitted that on December 8, 1969, in respect

to another parcel of property in San Bernardino County standing in her name, she notified the county tax assessor to discontinue sending her tax bills to 127 Utah Street, Los Angeles, and to send them to a new address in Montebello. [R. p.136, l.3-13; Ex. A-D.]

Simultaneously with the sending of the registered mail notice to the address in Arizona on December 29, 1969, the tax collector mailed an identical notice to the petitioners by regular mail to the 127 Utah Street, Los Angeles, address. Again, on January 10, 1970, the tax collector mailed such "courtesy" notice to the petitioners at their 127 Utah Street address. [R. p.129, l.5-12; Clk. p.57, l.17-22.] Petitioners did not receive these notices so mailed to them. [R. p.102, l.5-15, p.109, l.14-20.]

The trial court *found* that 127 Utah Street, Los Angeles, was not, as alleged, a correct mailing address of the petitioners, and it therefore found also against the contention that when the tax collector noted the Los Angeles address he "discovered the true address" of the petitioners and was therefore obliged to give them a registered mail notice to that address. [Clk. p.3, l.1 to p.4, l.2.] The Court of Appeal made reference to and relied on these factual findings. [Op.Ct. App. p.5.]

In the face of these very adequately supported findings, petitioners still contend and premise their argument here on the contention that "they continued to regularly receive their mail at that address through February, 1970, and even later." [Pts.Br. p.3.]

The contention that the "government" *knew* the "property owner's correct address" at the time of the mailing of the statutory registered mail notice is patently incorrect since 127 Utah Street was no longer the taxpayers' address and two regular mail notices of the sale to that address failed to reach petitioners. [R. p.102, l.5-15, p.109, l.14-20.] The Court of Appeal disposed of this same contention as follows:

> "According to the evidence, the tax collector processed the sale routinely, and did not know whether the Los Angeles address was a correct address or not. This fact could have been determined only by further investigation, which duty the legislature has not imposed upon the tax collector." [Appendix "A," Page vi.]

Another contention of the petitioners made and found wanting by the Court of Appeal and reiterated here is that the petitioning doctor, "in the course of his busy work," and the doctor's wife, whose distraction is not stated, did not realize they had not been receiving tax statements and reasonably assumed they were all received and paid. On this point, the Court of Appeal stated:

> "Although Dr. Offenberg testified that he relied on his auditors to 'take care of all the taxes and so forth,' the record permits the inference that appellants failed to pay the taxes because they believed that the property had escaped assessment." [Appendix "A," p. v.]

Note the testimony of Dr. Offenberg:

"Q Did you ever ask the owners around you whether they got assessed for their property?

"A I know they got assessed. I know I was going to get assessed also.

"Q When did you think it was going to happen, sir?

"A I didn't know about that. We didn't receive any notice. I didn't pay it. That is what it amounts to."
[R. p.129, l.5-12.]

Mrs. Offenberg admitted on the day she learned of the tax sale she told the respondent purchasers:

"I have never been assessed, and I never received a tax bill." [R. p.207, l.15 to p.208, l.1.]

And when confronted with this admission on cross-examination, she reiterated:

"I didn't receive a tax bill. I did not receive a tax bill." [R. p.137, l.16-23.]

From this evidence, it is apparent that the petitioners were in fact well aware of their failure to receive tax statements on this property and that they inferred from such non-receipt of tax bills that their property had escaped assessment, just as the Court of Appeal pointed out in its opinion. [Appendix "A," p. v.]

Petitioners have violated Rule 23 by presenting here

a highly biased, inaccurate statement of facts. Their petition should be denied for this violation.

III

NOTICE TO PETITIONERS WAS IN CONFORMITY WITH THE CALIFORNIA STATUTORY REQUIREMENT.

The trial court found that the tax collector gave the notice by mail and by publication which was required under the applicable statute, Revenue and Taxation Code Section 3701. [Clk. p.57, l.7-15.] The Court of Appeal concluded that:

> "There was substantial evidence that the requirements of the statute concerning notice were fully complied with."

The contention of petitioners that the statute was not complied with represents, obviously, a collateral attack on this finding and seeks to involve this Court in reweighing the evidence.

Section 3701 requires the tax collector to send a notice by registered mail "to the last assessee . . . at his last known address." The section then spells out precisely what efforts the tax collector is required to make in order to ascertain this "last known address":

> "To ascertain the address of the last assessee of the tax-deeded property, an examination shall be made of the assessment of this property on the rolls beginning with the year of delinquency to and including that of the last equalized roll."

The California decisions interpreting Section 3701 and its statutory predecessors show beyond question that the tax collector is required to do nothing more in ascertaining the "last known address" of the taxpayer than the section literally requires. *Crouch v. Shafer* (1917) 177 Cal. 154, 169 Pac. 1010 (Assessment roll showed street address but not city of residence. Held, tax collector was not required to mail any notice and the tax deed from the State was sufficient to vest title in the purchaser at the tax sale), *Penaat v. Terwilliger* (1944) 23 Cal.2d 865, 147 Pac.2d 552 (Taxpayer's name but no address appeared on the assessment roll. Held, no mailing of notice was required to impart validity to the tax sale).

The rationale of these decisions is, as the Court of Appeal pointed out in its opinion, that the deed to the State transfers title to the State in the same manner as a voluntary grant leaving the former owner with a statutory right of redemption only [Rev. and Tax. Code, Section 4101; *Sears v. County of Calaveras* (1955) 45 Cal.2d 518, 522, 289 P.2d 425]; that thereafter there is no constitutional right of redemption, which comes entirely from the statute and is subject to all the limitations and conditions imposed thereby [*Peterson v. Johnson* (1952) 39 Cal.2d 745, 748, 249 P.2d 17]; that the Legislature had the power to dispense with further notice to the delinquent taxpayer after the deed to the State [*Smith v. Furlong* (1911) 160 Cal. 522, 117 Pac. 527].

IV

THE STATUTORY NOTICE GIVEN TO PETITIONERS UNDER THE CIRCUMSTANCES OF THIS CASE DID NOT CONSTITUTE A DENIAL OF DUE PROCESS OF LAW.

Mullane v. Central Hanover Bank (1950) 339 U.S. 306, 70 S.Ct. 652, 984 L.Ed. 865, cited by petitioners, points out that what is constitutionally required by way of notice depends upon "all the circumstances." *Dohrmann Co. v. Security Savings & Loan Assn.* (1970) 8 Cal.App.3d 655, 87 Cal.Rptr. 792, from which petitioners also quote, posed the question whether a declaratory relief complaint brought by a conditional seller of personal property stated a cause of action in challenging the validity of a tax sale of personal property where the seller was ignorant of the sale and the only notice given was by posting in three public places. The Court observed that this was a lesser notice than that given by newspaper publication in *Mullane,* and simply held that the complaint stated a cause of action under the *Mullane* rule without deciding that the notice was or was not sufficient "under the circumstances."

The United States Supreme Court in *Mullane* and the California Appellate Court in *Dohrmann* were considering the sufficiency "under the circumstances" of notice by publication in a newspaper, and notice by posting, respectively. And in each case, the Court was talking about *known persons with known addresses.* Note the language used in *Dohrmann* [8 Cal.App.3d 655 at 664, quoting from *Mullane,* 324 U.S. at 319; 94 L.Ed. at 875]:

> "As to known persons with known addresses, (e)xceptions in the name of necessity do not sweep away the rule that within the limits of practicability notice must be such as is reasonably calculated to reach interested parties. Where the names and post-office addresses of those affected by a proceeding are at hand, the reasons disappear for resort to means less likely than the mails to apprise them of its pendency."

Petitioners were *known* persons, but their address was *not known* to the tax collector. To find the "true address" that the petitioners talk about in their brief from county records, the tax collector would have been required to ascertain that one of the petitioners, namely, Marie Offenberg, owned another parcel of property in San Bernardino County, and that she was the Marie Offenberg who, together with Max Offenberg, owned the Big Bear parcel. He would then have been required to discover the form filed with the county tax assessor by Marie Offenberg on December 9, 1969, showing a change of mailing address for tax statements from 127 Utah Street, Los Angeles, to 1107 West Beverly Boulevard, Montebello. No decisions cited by petitioners suggest that such extravagant efforts are within the "limits of practicability" under comparable statutory procedures and are thus required to be exerted to impart constitutionality to a tax sale. A significant "circumstance" in this case is that we are dealing with a time-tested, comprehensive statutory scheme designed to stabilize tax titles. See "Taxation: A Delicately Planned Arrangement of Cargo," Sabine, (1965) 53 Cal.L.Rev. 173. But it is a scheme, nonetheless, which gives the taxpayer a very adequate oppor-

tunity to redeem his property by payment of his taxes. Like any effective tax law, some minimal cooperation is required of the taxpayer to make the system function. Several California decisions suggest that there is a civic duty to pay the just taxes on one's property and to call the attention of taxing authorities to irregularities in respect thereto. See, e.g., *Litchfield v. County of Marin* (1955) 130 Cal.App.2d 806, 280 P.2d 117.

The trial court found that the taxpayers here were estopped to question the validity of the deed for their failure to take any steps to discover why they were not receiving tax statements, for their failure to notify the assessor of their correct mailing address, and for their failure to pay any taxes on the property during the seven-year period they exercised the privileges of ownership of the property. As the Court of Appeal below pointed out, the taxpayers were in fact well aware of their non-receipt of tax statements and inferred therefrom that their property had escaped assessment. Shortly before the tax sale, they informed the tax assessor of their change of address from Utah Street, Los Angeles, to a residence address in Montebello, but deliberately withheld such information from the assessor with respect to the Big Bear property. It is these same taxpayers who now urge that special efforts should have been made by the tax collector to ascertain their correct, current address. To find constitutionally insufficient the notice procedures of Section 3701 as an accommodation to deliberate tax-evaders whose long course of conduct was calculated to avoid tax payment would serve to encourage tax evasion and adversely affect the stability of tax titles, a stability achieved in California through years of combined legislative, administrative, and judicial effort. See "Taxation: A

Delicately Planned Arrangement of Cargo," Sabine (1965), 53 Cal.L.Rev. 173.

Respondents Doyle submit that under the circumstances here the notice procedures employed were constitutionally adequate and that no due process question is presented.

Respectfully submitted,

FULLERTON, MORRIS & YAHNKE, INC.
A Professional Corporation
By: ROBERT S. MORRIS
Attorneys for Respondents Doyle

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COURT OF APPEAL, FOURTH DISTRICT

SECOND DIVISION

STATE OF CALIFORNIA

FILED

MAY 31 1972

Clerk

MAX OFFENBERG AND MARIE OFFENBERG,

Plaintiffs and Appellants,

v.

THE STATE OF CALIFORNIA, ET AL.,

Defendants and Respondents.

4 Civil 11634

(Sup.Ct.No.130618)

OPINION

APPEAL from a judgment of the Superior Court of San Bernardino County. Vernon V. Hunt, Sr., Judge.* Judgment affirmed.

Simon, Sheridan, Murphy, Thornton & Hedvena, John D. Cahill and Mike Mayo, for Plaintiffs and Appellants.

Stanford D. Herlick, County Counsel, and Robert W. Walker, Deputy County Counsel, for Defendants and Respondents County of San Bernardino and C. Leon Gregory, Tax Collector.

Fullerton & Morris and Robert S. Morris, for Defendants and Respondents Orville K. Doyle and Leona M. Doyle.

BY THE COURT

Appellants, plaintiffs below, are Dr. Max Offenberg and his wife Marie.

During January 1963 appellants purchased real property at

*Retired judge assigned by the Chairman of the Judicial Council.

CLOSE TO EDGE

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Big Bear in San Bernardino County. The property was assessed for real property taxes as two separate adjoining parcels. The parcel that concerns us here is a 100 by 165 foot lot improved by construction of a substantial mountain cabin. The second parcel was unimproved.

A real property tax was levied on the Big Bear property, attaching as a lien as of noon on the first Monday in March 1963 (Rev. & Tax. Code, § 2192). The tax on the mountain cabin parcel was never paid. On June 30, 1964, the property was sold to the state (Rev. & Tax. Code, § 3436). On July 3, 1969, the tax collector executed a deed conveying the property to the state (Rev. & Tax. Code, § 3511). The tax collector gave notice of intended sale of tax-deeded property pursuant to section 3701 of the Revenue and Taxation Code, which reads as follows:

> "After receiving the written authorization of the Controller and not less than 21 nor more than 28 days, before the proposed sale, the tax collector shall send a notice by registered mail of the intended sale to the last assessee of each portion of the property at his last known address. To ascertain the address of the last assessee of the tax-deeded property an examination shall be made of the assessment of this property on the rolls beginning with the year of delinquency to and including that of the last equalized roll."

LOSE TO EDGE

notice of intended sale was published in the county seat and in the judicial district in which the property is situated (Rev. & Tax. Code, §§ 3702, 3704). On January 20, 1970, the mountain cabin parcel was sold at public auction to Orville and Leona Doyle, the highest bidders (Rev. & Tax. Code, § 3706). On receiving the full purchase price the tax collector executed a deed to the purchasers (Rev. & Tax. Code, § 3708). The unimproved parcel adjoining the mountain cabin parcel was not sold at the public auction, having been earlier withdrawn from sale for reasons discussed below.

Respondents Doyle wrote appellants that they had taken possession of the cabin and requested appellants to remove their personal property therefrom. This lawsuit followed.

On February 16, 1970, appellants filed a "Complaint to cancel tax deed; quiet title; forcible entry; and conversion," naming as defendants the State of California, the County of San Bernardino, the county tax collector, and the Doyles. The state filed a disclaimer. The county and the tax collector answered. The Doyles answered and cross-complained to quiet their title against the appellants. The matter was tried to the court. Findings of fact and conclusions of law were made and judgment was given that appellants take nothing by their complaint and that title to the property be quieted in the Doyles, from which judgment this appeal is taken.

It appeared at the trial that the 1963 tax bill and all

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subsequent bills were sent to appellants at a Yuma, Arizona address. This address appears in the record as the address of the person from whom appellant purchased the property and is likewise the address given for the assessees of the mountain cabin parcel appearing on each assessment roll from 1963 onward. The original deed to appellants included an instruction in the upper lefthand corner that after recording, the deed should be mailed to "Mr. and Mrs. Max Offenberg 127 Utah Street Los Angeles, California." As part of the routine preliminaries to the public auction, the tax collector prepared a "tax sale search sheet" which noted the Los Angeles address. At the same time the tax collector sent the notice of intended sale to the Yuma address by registered mail, he sent a "courtesy notice" to the Los Angeles address by regular mail.

The Los Angeles address was the location of a hospital formerly owned by Dr. Offenberg. Dr. Offenberg had sold the hospital in October 1969, at which time he requested the post office to forward any mail. The notice sent to Los Angeles never reached appellants. The notice sent to Yuma was returned marked "Moved - left no address."

It also appeared at the trial that appellants were knowledgeable in real estate matters, as evidenced by their ownership of approximately eight parcels of real property in Los Angeles County and other real property at Hesperia in San Bernardino County. Mrs. Offenberg testified that she did not receive a tax bill for 1963 or any subsequent year on the Big Bear property. She was aware of the necessity of keeping the tax authorities advised of a current address since duri

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ecember 1969, in respect to the Hesperia property only, she otified the San Bernardino County Tax Assessor to discontinue ending the tax bills to the Los Angeles address and to send them o a Montebello residence address. Although Dr. Offenberg testified hat he relied on his auditors to "take care of all the taxes and so orth," the record permits the inference that appellants failed to ay the taxes because they believed that the property had escaped ssessment.

To begin, the deed to the state transfers title to the state he same in effect as a voluntary grant (Sears v. County of Calaveras, 5 Cal.2d 518, 522), leaving the former owner with a statutory right of edemption only (Rev. & Tax. Code, § 4101). On completion of the sale fter the deed to the state, the right of redemption is terminated ev. & Tax. Code, § 3707). There is no constitutional right of edemption, which comes entirely from the statute and is subject to l the limitations and conditions therein imposed (Peterson v. hnson, 39 Cal.2d 745, 748). The Legislature might have adopted a heme of disposing of tax-deeded property without notice given to e delinquent taxpayer of intention to do so (Smith v. Furlong, 160 l. 522, 529). As it is the statute does require notice both by il and by publication. There was substantial evidence that the quirements of the statute concerning notice were fully complied th.

The trial court found against appellants on the allegation

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that when the tax collector noted the Los Angeles address he "discovered the true address" of the appellants, and was accordingly obliged to give notice to appellants to the Los Angeles address by registered mail.

According to the evidence, the tax collector processed the sale routinely, and did not know whether the Los Angeles address was a correct address or not. This fact could have been determined only by further investigation, which duty the Legislature has not imposed upon the tax collector. The "courtesy notice" was nothing more than the name implies, that is, a voluntary extra effort on the part of the tax collector for the benefit of the delinquent taxpayer. The statutory scheme places the burden on the tax collector to ascertain the address of the last assessee of the tax-deeded property sought to be sold by "an examination . . . made of the assessment of this property on the rolls beginning with the year of delinquency to and including that of the last equalized roll." (Rev. & Tax. Code, § 3701). The assessment of the mountain cabin parcel on the 1963-1969 rolls placed in evidence gives the Yuma address for appellants. Notice given to the Yuma address by registered mail constituted full compliance with the law.

Also concerning the notice by mail, appellants placed in evidence the 1969 assessment roll entry for the unimproved parcel adjoining the mountain cabin parcel which was listed separately in the rolls from the mountain cabin parcel. As to this entry, a hand-

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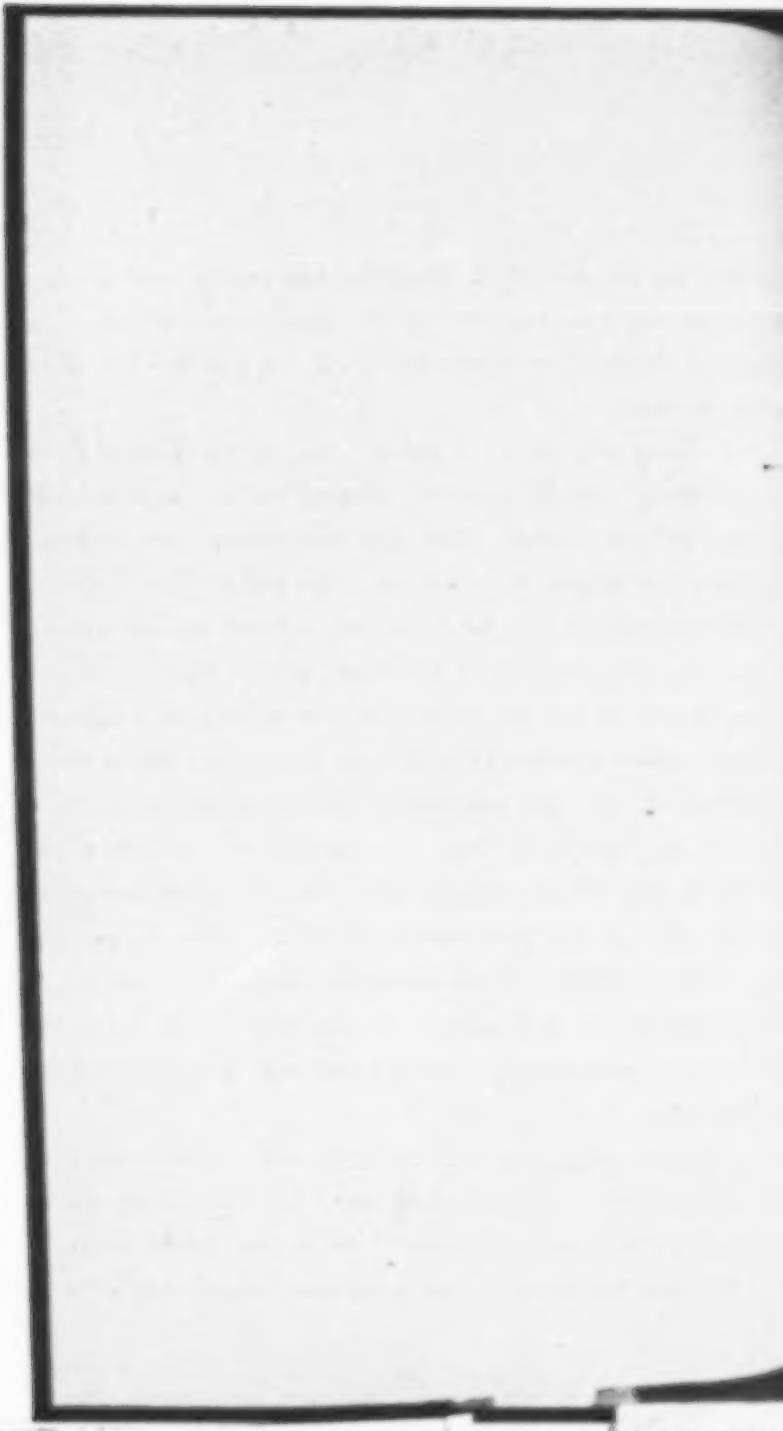

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written notation was made by someone in the tax assessor's office on January 10, 1970, ten days before the date set for the tax sale of the mountain cabin parcel, lining through the Yuma address and setting out the Los Angeles address. This moved the tax collector to send a second notice by regular mail to the Los Angeles address. The following explanation was given: "We make every effort to notify the taxpayer, and if one attempt fails, we'll make a second try. [¶] When I found the additional assessee's lot, I sent the second letter." Appellants contend that upon observing the notation of the Los Angeles address on the assessment roll entry for the unimproved parcel, the tax collector should have withdrawn the mountain cabin parcel from sale. Nothing in the Revenue and Taxation Code would compel this result. The notation did not constitute any better evidence than the tax collector already had on hand for purposes of the mailed notice relating to the mountain cabin parcel, which was given in the manner already set forth.

Appellant argues that the published notice was defective. No issue was raised by the pleadings in this regard. Nevertheless the record has been examined and it reveals that the mountain cabin parcel was correctly described in all notices given. The unimproved parcel was not included in the notice published in the judicial district in which the property is situated, and this is the apparent reason why it was withdrawn from sale. Using appellants' own cited standard, "the object of the statute is to notify the owner that the

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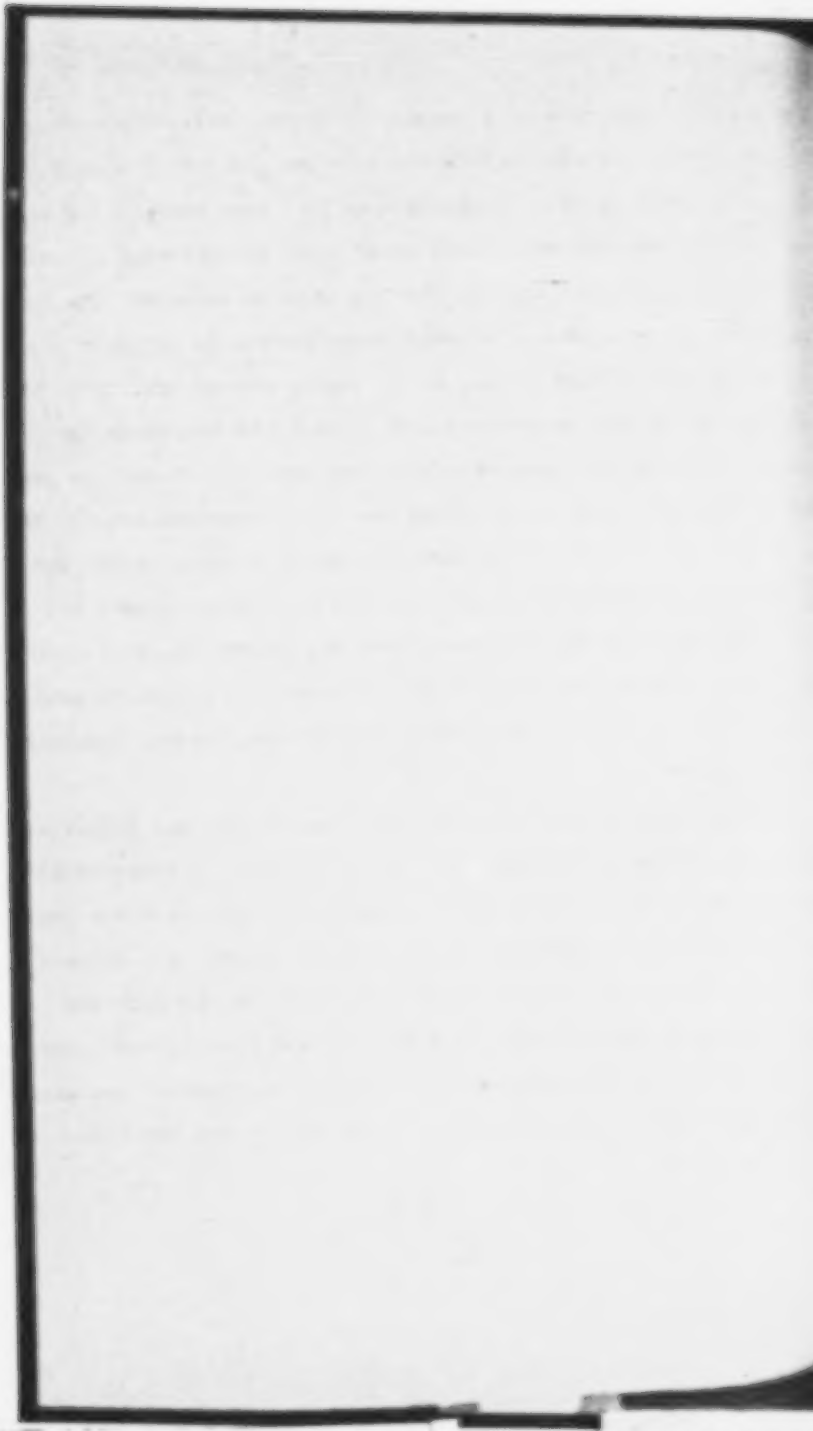

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taxes thereon are delinquent . . . and the description of the lot must be sufficient to give such notice." The purpose of the statutory notice concerning the mountain cabin parcel was thus achieved.

Since the Doyles have good title to the property, the issues concerning forcible entry and unlawful detainer drop out of the case. As far as the question of conversion is concerned, there was substantial evidence that the Doyles asserted no ownership of appellants' personal property found in the cabin; there was no evidence that the Doyles exercised any wrongful dominion over such property. Any incidental use of appellants' property was attributable to the fact that appellants failed to honor the request to remove the same.

The judgment is affirmed.

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APPENDIX "B"

CLERK'S OFFICE, SUPREME COURT
4250 STATE BUILDING

SAN FRANCISCO, CALIFORNIA 94102

JUL 26 1972

DEAR SIR: *I have this day filed Order*

In re: 4 Civ. No. 11634

Offenberg

on
State of California
Co. of San Bernardino

Respectfully,

G. E. BISHEL
Clerk